

# Senate File 369 - Introduced

SENATE FILE \_\_\_\_\_  
BY COMMITTEE ON STATE  
GOVERNMENT

(SUCCESSOR TO SSB 1104)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to voting machines and optical scan voting  
2 systems.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1607SV 82  
5 sc/je/5

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1 1 Section 1. Section 49.28, Code 2007, is amended to read as  
1 2 follows:

1 3 49.28 COMMISSIONER TO FURNISH REGISTERS AND SUPPLIES.

1 4 1. The commissioner shall prepare and furnish to each  
1 5 precinct an election register and all other books, forms,  
1 6 materials, equipment, and supplies necessary to conduct the  
1 7 election.

1 8 2. a. After the registration deadline and before election  
1 9 day the commissioner shall prepare an election register for  
1 10 each precinct in which voting will occur on the day of the  
1 11 election. The precinct election register shall be a list of  
1 12 the names and addresses of all registered voters of the  
1 13 precinct. Inactive records listed in the election register  
1 14 shall be clearly identified with a special mark or symbol.

1 15 b. When a precinct is divided by a district boundary, and  
1 16 some, but not all, registered voters of the precinct may vote  
1 17 on an issue or office from that district, the election  
1 18 register shall clearly indicate which of the registered voters  
1 19 are entitled to vote in the district.

1 20 3. a. The commissioner shall furnish a supply of printed  
1 21 ballots to each precinct where voting machines are to be used  
1 22 for any election.

1 23 b. In any precinct in which voting machines are designated  
1 24 as the only method of voting for an election, a paper ballot  
1 25 shall be furnished to any person offering to vote under the  
1 26 provisions of section 49.81 or 49.90 or to any person offering  
1 27 to vote if any of the following apply:

1 28 (1) A power failure prevents use of the voting machines.

1 29 (2) A malfunction occurs that prevents the use of one or  
1 30 more voting machines.

1 31 (3) A malfunction occurs preventing one or more voting  
1 32 machines from producing the paper record required in section  
1 33 52.7, subsection 2.

1 34 (4) Any other conditions existing due to a fault of one or  
1 35 more voting machines that prevents a person offering to vote  
2 1 from casting the person's ballot.

2 2 c. The ballots furnished by the commissioner shall be the  
2 3 same as the ballots used for voters casting ballots pursuant  
2 4 to sections 49.81 and 49.90, and voting shall be in accordance  
2 5 with statutory provisions relating to conventional paper  
2 6 ballots. After a paper ballot has been voted under this  
2 7 subsection, the precinct election official shall place the  
2 8 voted ballot in a closed container to be kept in a secure  
2 9 manner in a secure place.

2 10 Sec. 2. Section 50.48, subsection 4, unnumbered paragraph  
2 11 1, Code 2007, is amended to read as follows:

2 12 When all members of the recount board have been selected,  
2 13 the board shall undertake and complete the required recount as  
2 14 expeditiously as reasonably possible. The commissioner or the  
2 15 commissioner's designee shall supervise the handling of  
2 16 ballots or voting machine documents to ensure that the ballots  
2 17 and other documents are protected from alteration or damage.

2 18 The board shall open only the sealed ballot containers from  
2 19 the precincts specified to be recounted in the request or by  
2 20 the recount board. The board shall recount only the ballots  
2 21 which were voted and counted for the office in question,  
2 22 including any disputed ballots returned as required in section  
2 23 50.5. If an electronic tabulating system was used to count  
2 24 the ballots, the recount board may request the commissioner to  
2 25 retabulate the ballots using the electronic tabulating system.  
2 26 The same program used for tabulating the votes on election day  
2 27 shall be used at the recount unless the program is believed or  
2 28 known to be flawed. If a voting machine was used, the paper  
2 29 record required in section 52.7, subsection 2, shall be the  
2 30 official record used in the recount. However, if the  
2 31 commissioner believes or knows that the paper records produced  
2 32 from a machine have been compromised due to damage, mischief,  
2 33 malfunction, or other cause, the printed ballot images  
2 34 produced from the internal audit log for that machine shall be  
2 35 the official record used in the recount.

3 1 Sec. 3. Section 52.1, subsection 1, Code 2007, is amended  
3 2 to read as follows:

3 3 1. At all elections conducted under chapter 49, and at any  
3 4 other election unless specifically prohibited by the statute  
3 5 authorizing the election, votes may be cast, registered,  
3 6 recorded, and counted by means of either voting machines or  
3 7 ~~electronic optical scan~~ voting systems, in accordance with  
3 8 this chapter.

3 9 Sec. 4. Section 52.1, subsection 2, Code 2007, is amended  
3 10 by striking the subsection and inserting in lieu thereof the  
3 11 following:

3 12 2. As used in this chapter, unless the context otherwise  
3 13 requires:

3 14 a. "Automatic tabulating equipment" means apparatus,  
3 15 including but not limited to electronic data processing  
3 16 machines, that are utilized to ascertain the manner in which  
3 17 optical scan ballots have been marked by voters or by  
3 18 electronic ballot marking devices, and count the votes marked  
3 19 on the ballots.

3 20 b. "Ballot" includes paper ballots designed to be read by  
3 21 automatic tabulating equipment. In appropriate contexts,  
3 22 "ballot" also includes conventional paper ballots.

3 23 c. "Ballot marking device" means a pen, pencil, or similar  
3 24 writing tool, or an electronic device, all designed for use in  
3 25 marking an optical scan ballot, and so designed or fabricated  
3 26 that the mark it leaves may be detected and the vote so cast  
3 27 counted by automatic tabulating equipment.

3 28 d. "Optical scan ballot" means a printed ballot designed  
3 29 to be marked by a voter with a ballot marking device.

3 30 e. "Optical scan voting system" means a system employing  
3 31 paper ballots under which votes are cast by voters by marking  
3 32 paper ballots with a ballot marking device and thereafter  
3 33 counted by use of automatic tabulating equipment.

3 34 f. "Program" means the written record of the set of  
3 35 instructions defining the operations to be performed by a  
4 1 computer in examining, counting, tabulating, and printing  
4 2 votes.

4 3 g. "Voting machine" means a direct recording electronic  
4 4 device meeting the requirements of section 52.7, subsections 1  
4 5 and 2, and designated for use in casting, registering,  
4 6 recording, and counting votes at an election.

4 7 Sec. 5. Section 52.2, Code 2007, is amended to read as  
4 8 follows:

4 9 52.2 PURCHASE.

4 10 1. The Except as otherwise provided in subsection 2, the  
4 11 board of supervisors of a county may, by a majority vote,  
4 12 authorize, purchase, and order the use of voting machines or  
4 13 an ~~electronic optical scan~~ voting system in any one or more  
4 14 voting precincts within the county until otherwise ordered by  
4 15 the board of supervisors. Voting machines and an ~~electronic~~  
4 16 ~~optical scan~~ voting system may be used concurrently at the  
4 17 same precinct.

4 18 2. Notwithstanding any provision to the contrary:

4 19 a. On or after the effective date of this Act, a county  
4 20 whose voting system primarily utilizes voting machines, as  
4 21 defined in section 52.1, shall, when seeking to replace the  
4 22 voting system, replace the voting system with an optical scan  
4 23 voting system only. The requirements of the federal Help  
4 24 America Vote Act relating to disabled voters shall be met by a  
4 25 county through the use of electronic ballot marking devices  
4 26 that are compatible with an optical scan voting system.

4 27 b. On or after the effective date of this Act, a county  
4 28 that utilizes a voting machine, as defined in section 52.1,

~~4 29 and an optical scan voting system concurrently at the same~~  
~~4 30 precinct shall, when seeking to replace the voting machine,~~  
~~4 31 replace the voting machine with an electronic ballot marking~~  
~~4 32 device that is compatible with an optical scan voting system~~  
~~4 33 in order to ensure that each precinct in the county shall have~~  
~~4 34 at least one electronic ballot marking device.~~

4 35 Sec. 6. Section 52.7, Code 2007, is amended by striking  
5 1 the section and inserting in lieu thereof the following:

5 2 52.7 CONSTRUCTION OF MACHINE APPROVED == REQUIREMENTS.

5 3 1. A voting machine approved by the state board of  
5 4 examiners for voting machines and optical scan voting systems  
5 5 shall be so constructed as to do all of the following:

5 6 a. Permit straight party voting, pursuant to section  
5 7 49.94, for all political parties and nonparty political  
5 8 organizations on the ballot.

5 9 b. Permit a voter to vote for any person for any office,  
5 10 whether or not the person is nominated as a candidate by any  
5 11 party or organization.

5 12 c. Permit voting in absolute secrecy.

5 13 d. Prevent voting for more than one person for the same  
5 14 office, except where a voter is lawfully entitled to vote for  
5 15 more than one person for that office.

5 16 e. Afford a voter an opportunity to vote for any or all  
5 17 persons for that office as the voter is by law entitled to  
5 18 vote for and no more, at the same time preventing a voter from  
5 19 voting for the same person twice.

5 20 f. Provide a voter with an opportunity to change a vote  
5 21 before the ballot is recorded and counted.

5 22 g. Present together the names of each team of candidates  
5 23 for president and vice president and for governor and  
5 24 lieutenant governor. The votes for a team shall be counted as  
5 25 a vote for both candidates of the team.

5 26 h. Provide a voter with a method for casting write-in  
5 27 votes for paired offices so that the voter can specify one  
5 28 person as a candidate for president or for governor and one  
5 29 person as a candidate for vice president or for lieutenant  
5 30 governor.

5 31 i. Accurately account for every vote cast upon it.

5 32 j. If the machine is to be used for provisional or  
5 33 absentee voting, remove information from the ballot  
5 34 identifying the voter before the ballot is recorded and  
5 35 counted.

6 1 k. Maintain an internal audit log that will store each  
6 2 ballot cast separate from the ballot tabulation function,  
6 3 which ballot may be reproduced on paper in the case of a  
6 4 recount or machine malfunction. The printed ballot image  
6 5 produced from an internal audit log shall be sealed in the  
6 6 manner, and for the time period, prescribed in section 50.12.  
6 7 The state commissioner of elections shall adopt rules to  
6 8 implement this paragraph "k".

6 9 l. For all elections held on or after November 4, 2008,  
6 10 provide a paper record for review by the voter as provided in  
6 11 subsection 2.

6 12 2. A voting machine shall be capable of producing a paper  
6 13 record that the voter may review before the voter casts the  
6 14 voter's ballot. The paper record shall meet all of the  
6 15 following requirements:

6 16 a. Be printed on paper separate from all other paper  
6 17 records.

6 18 b. Be readable by the voter without the use of an  
6 19 electronic device. It may also be machine-readable.

6 20 c. Not contain any information that will identify the  
6 21 person who cast the ballot.

6 22 d. Be stored at the polling place in a secure container,  
6 23 such that the voter is incapable of removing the paper record  
6 24 from the polling place.

6 25 3. After the polls close, the precinct election officials  
6 26 shall seal all paper records required by subsection 2 in the  
6 27 manner, and for the time period, prescribed in section 50.12.

6 28 Sec. 7. Section 52.33, Code 2007, is amended to read as  
6 29 follows:

6 30 52.33 ABSENTEE VOTING BY ~~ELECTRONIC~~ OPTICAL SCAN VOTING  
6 31 SYSTEM.

6 32 In any county in which the board of supervisors has adopted  
6 33 voting by means of an electronic optical scan voting system,  
6 34 the commissioner ~~may elect to shall~~ also conduct absentee  
6 35 voting by use of such a system ~~if the system so used is~~

~~7 1 compatible with the counting center serving the precinct~~  
~~7 2 polling places in the county where voting is by means of an~~

~~7 3 electronic voting system. In any other county, the~~  
7 4 commissioner may with approval of the board of supervisors

7 5 conduct absentee voting by use of an ~~electronic optical scan~~  
7 6 voting system. All provisions of chapter 53 shall apply to  
7 7 such absentee voting, so far as applicable. In counties where  
7 8 absentee voting is conducted by use of an ~~electronic optical~~  
7 9 ~~scan~~ voting system, the special precinct counting board shall,  
7 10 at the time required by chapter 53, prepare absentee ballots  
7 11 for ~~delivery to the counting center~~ ~~tabulation~~ in the manner  
7 12 prescribed by this chapter.

7 13 The absentee and special precinct board shall follow the  
7 14 process prescribed in section 52.37, subsection ~~2~~ 1, in  
7 15 handling damaged or defective ballots and in counting write-in  
7 16 votes on ~~special paper optical scan~~ ballots.

7 17 Sec. 8. Sections 52.11 through 52.16, 52.21, 52.22, 52.32,  
7 18 52.34, 52.36, 52.38, and 52.40, Code 2007, are repealed.

7 19 CONFORMING AMENDMENTS

7 20 Sec. 9. Section 39A.5, subsection 1, paragraph a,  
7 21 subparagraph (3), Code 2007, is amended to read as follows:

7 22 (3) Circulating, communicating, or attempting to circulate  
7 23 or communicate information with reference to the result of the  
7 24 counted ballots or making a compilation of vote subtotals  
7 25 before the polls are closed in violation of section 51.11-  
7 26 ~~52.40~~, or 53.23.

7 27 Sec. 10. Section 43.45, subsection 4, unnumbered paragraph  
7 28 1, Code 2007, is amended to read as follows:

7 29 In precincts where ~~electronic optical scan~~ voting systems  
7 30 are used and ballots are counted in the precinct, precinct  
7 31 election officials shall do all of the following:

7 32 Sec. 11. Section 43.45, subsection 5, Code 2007, is  
7 33 amended by striking the subsection.

7 34 Sec. 12. Section 43.48, Code 2007, is amended by striking  
7 35 the section and inserting in lieu thereof the following:

8 1 43.48 ELECTOR MAY ASCERTAIN VOTE CAST.

8 2 The commissioner shall make available to the public the  
8 3 precinct counts produced by the voting equipment.

8 4 Sec. 13. Section 46.22, Code 2007, is amended to read as  
8 5 follows:

8 6 46.22 VOTING.

8 7 Voting at judicial elections shall be by separate paper  
8 8 ballot, ~~special paper ballot, ballot cards~~ ~~optical scan~~  
8 9 ~~ballot~~, or by voting machine in the space provided for public  
8 10 measures. If ~~separate~~ paper ballots are used, the election  
8 11 judges shall offer a ballot to each voter. If ~~special paper~~  
8 12 ~~optical scan~~ ballots or ~~ballot cards~~ are used, either a  
8 13 separate ballot or a distinct heading may be used to  
8 14 distinguish the judicial ballot. Separate ballot boxes for  
8 15 the general election ballots and the judicial election ballots  
8 16 are not required. The general election ballot and the  
8 17 judicial election ballot may be voted in the same voting  
8 18 booth.

8 19 Sec. 14. Section 49.25, subsection 3, Code 2007, is  
8 20 amended to read as follows:

8 21 3. The commissioner shall furnish to each precinct where  
8 22 voting is to be by paper ballot, ~~special paper~~ or ~~optical scan~~  
8 23 ~~ballot, or ballot card~~, rather than by voting machine, the  
8 24 necessary ballot boxes, suitably equipped with seals or locks  
8 25 and keys, and voting booths. The voting booths shall be  
8 26 approved by the board of examiners for voting machines and  
8 27 ~~electronic optical scan~~ voting systems and shall provide for  
8 28 voting in secrecy. At least one voting booth in each precinct  
8 29 shall be accessible to persons with disabilities. If the  
8 30 lighting in the polling place is inadequate, the voting booths  
8 31 used in that precinct shall include lights. Ballot boxes  
8 32 shall be locked or sealed before the polls open and shall  
8 33 remain locked or sealed until the polls are closed, except as  
8 34 provided in ~~sections~~ section 51.7 and ~~52.40~~, or to provide  
8 35 necessary service to a malfunctioning portable vote tallying  
9 1 device. If a ballot box is opened prior to the closing of the  
9 2 polls, two precinct election officials not of the same party  
9 3 shall be present and observe the ballot box being opened.

9 4 Sec. 15. Section 49.30, subsection 1, Code 2007, is  
9 5 amended to read as follows:

9 6 1. Where ~~special paper~~ ~~optical scan~~ ballots are used, if  
9 7 it is not possible to include all offices and public measures  
9 8 on a single ballot, separate ballots may be provided for  
9 9 nonpartisan offices, judges, or public measures.

9 10 Sec. 16. Section 49.30, subsection 2, Code 2007, is  
9 11 amended by striking the subsection.

9 12 Sec. 17. Section 49.30, subsection 3, unnumbered paragraph  
9 13 1, Code 2007, is amended to read as follows:

9 14 Where conventional paper ballots are used, separate paper  
9 15 ballots shall be used:

9 16 Sec. 18. Section 49.43, unnumbered paragraphs 1 and 2,  
9 17 Code 2007, are amended to read as follows:

9 18 If possible, all public measures and constitutional  
9 19 amendments to be voted upon by an elector shall be included on  
9 20 a single ~~special paper~~ ballot which shall also include all  
9 21 offices to be voted upon. However, if it is necessary, a  
9 22 separate ballot may be used as provided in section 49.30,  
9 23 subsection 1.

9 24 In precincts using paper ballots all public measures to be  
9 25 voted upon by a voter at a given election shall be printed  
9 26 upon one ballot of some color other than white. In precincts  
9 27 using voting machines all public measures shall be placed in  
~~9 28 the question row on the machine; however, if it is impossible~~  
~~9 29 to place all the public measures on the machine ballot, or if~~  
~~9 30 only a portion of the registered voters of the precinct are~~  
~~9 31 entitled to vote upon any measure presented, the commissioner~~  
~~9 32 may provide a separate paper ballot for the public measure or~~  
~~9 33 measures.~~

9 34 Sec. 19. Section 49.44, unnumbered paragraphs 1 and 2,  
9 35 Code 2007, are amended to read as follows:

10 1 When a proposed constitutional amendment or other public  
10 2 measure to be decided by the voters of the entire state is to  
10 3 be voted upon, the state commissioner shall prepare a written  
10 4 summary of the amendment or measure including the number of  
10 5 the amendment or statewide public measure assigned by the  
10 6 state commissioner. The summary shall be printed immediately  
10 7 preceding the text of the proposed amendment or measure on the  
10 8 paper ballot or ~~special paper~~ optical scan ballot referred to  
10 9 in section 49.43. If the complete text of the public measure  
10 10 will not fit on the ~~special paper~~ ballot it shall be posted  
10 11 inside the voting booth. A copy of the full text shall be  
10 12 included with any absentee ballots.

10 13 In precincts where the amendment or measure will be voted  
10 14 on by machine, the summary shall be placed ~~in~~ on the voting  
10 15 machine ~~inserts~~ as required by section 52.25.

10 16 Sec. 20. Section 49.53, unnumbered paragraph 1, Code 2007,  
10 17 is amended to read as follows:

10 18 The commissioner shall not less than four nor more than  
10 19 twenty days before the day of each election, except those for  
10 20 which different publication requirements are prescribed by  
10 21 law, publish notice of the election. The notice shall contain  
10 22 a facsimile of the portion of the ballot containing the first  
10 23 rotation as prescribed by section 49.31, subsection 2, and  
10 24 shall show the names of all candidates or nominees and the  
10 25 office each seeks, and all public questions, to be voted upon  
10 26 at the election. The sample ballot published as a part of the  
10 27 notice may at the discretion of the commissioner be reduced in  
10 28 size relative to the actual ballot but such reduction shall  
10 29 not cause upper case letters appearing in candidates' names or  
10 30 in summaries of public measures on the published sample ballot  
10 31 to be less than ninety percent of the size of such upper case  
10 32 letters appearing on the actual ballot. The notice shall also  
10 33 state the date of the election, the hours the polls will be  
10 34 open, the location of each polling place at which voting is to  
10 35 occur in the election, the location of the polling places  
11 1 designated as early ballot pick-up sites, and the names of the  
11 2 precincts voting at each polling place, but the statement need  
11 3 not set forth any fact which is apparent from the portion of  
11 4 the ballot appearing as a part of the same notice. The notice  
11 5 shall include the full text of all public measures to be voted  
11 6 upon at the election. The notice shall also include notice of  
11 7 testing required pursuant to sections 52.9, ~~and~~ 52.35, ~~and~~  
~~11 8 52.38.~~

11 9 Sec. 21. Section 49.90, Code 2007, is amended to read as  
11 10 follows:

11 11 49.90 ASSISTING VOTER.

11 12 Any voter who may declare upon oath that the voter is  
11 13 blind, cannot read the English language, or is, by reason of  
11 14 any physical disability other than intoxication, unable to  
11 15 cast a vote without assistance, shall, upon request, be  
11 16 assisted by the two officers as provided in section 49.89, or  
11 17 alternatively by any other person the voter may select in  
11 18 casting the vote. The officers, or the person selected by the  
11 19 voter, shall cast the vote of the voter requiring assistance,  
11 20 and shall thereafter give no information regarding the vote  
11 21 cast. If any elector because of a disability cannot enter the  
11 22 building where the polling place for the elector's precinct of  
11 23 residence is located, the two officers shall take a paper  
11 24 ballot to the vehicle occupied by the elector with a  
11 25 disability and allow the elector to cast the ballot in the  
11 26 vehicle. If an elector with a disability cannot cast a ballot

11 27 on a voting machine the elector shall be allowed to cast a  
11 28 paper ballot, which shall be opened immediately after the  
11 29 closing of the polling place by the two precinct election  
11 30 officials designated under section 49.89, who shall register  
11 31 the votes cast thereon on a voting machine in the polling  
11 32 place before the votes cast there are tallied pursuant to  
11 33 section ~~52.21~~ 50.16. To preserve so far as possible the  
11 34 confidentiality of each ballot of an elector with a  
11 35 disability, the two officers shall proceed substantially in  
12 1 the same manner as provided in section 53.24. In precincts  
12 2 where all voters use paper ballots, those cast by voters with  
12 3 disabilities shall be deposited in the regular ballot box and  
12 4 counted in the usual manner.

12 5 Sec. 22. Section 49.99, unnumbered paragraph 1, Code 2007,  
12 6 is amended to read as follows:

12 7 The voter may also write on the line provided for write-in  
12 8 votes the name of any person for whom the voter desires to  
12 9 vote and mark the voting target opposite the name. If the  
12 10 voter is using a voting system other than an ~~electronic~~  
12 11 optical scan voting system, as defined in section 52.1, the  
12 12 writing of the name shall constitute a valid vote for the  
12 13 person whose name has been written on the ballot without  
12 14 regard to whether the voter has made a mark opposite the name.  
12 15 However, when a write-in vote is cast using an ~~electronic~~  
12 16 optical scan voting system, the ballot must also be marked in  
12 17 the corresponding space in order to be counted. Marking the  
12 18 voting target opposite a write-in line without writing a name  
12 19 on the line shall not affect the validity of the remainder of  
12 20 the ballot.

12 21 Sec. 23. Section 52.3, Code 2007, is amended to read as  
12 22 follows:

12 23 52.3 TERMS OF PURCHASE == TAX LEVY.

12 24 The county board of supervisors, on the adoption and  
12 25 purchase of a voting machine or an ~~electronic optical scan~~  
12 26 voting system, may issue bonds under section 331.441,  
12 27 subsection 2, paragraph "b", subparagraph (1).

12 28 Sec. 24. Section 52.4, Code 2007, is amended to read as  
12 29 follows:

12 30 52.4 EXAMINERS == TERM == REMOVAL.

12 31 The state commissioner of elections shall appoint three  
12 32 members to a board of examiners for ~~voting machines and~~  
12 33 ~~electronic~~ voting systems, not more than two of whom shall be  
12 34 from the same political party. The examiners shall hold  
12 35 office for staggered terms of six years, subject to removal at  
13 1 the pleasure of the state commissioner of elections.

13 2 At least one of the examiners shall have been trained in  
13 3 computer programming and operations. The other two members  
13 4 shall be directly involved in the administration of elections  
13 5 and shall have experience in the use of ~~electronic voting~~  
13 6 ~~machines and optical scan~~ voting systems.

13 7 Sec. 25. Section 52.5, Code 2007, is amended to read as  
13 8 follows:

13 9 52.5 TESTING AND EXAMINATION OF VOTING EQUIPMENT.

13 10 A person or corporation owning or being interested in a  
13 11 voting machine or ~~electronic optical scan~~ voting system may  
13 12 request that the state commissioner call upon the board of  
13 13 examiners to examine and test the machine or system. Within  
13 14 seven days of receiving a request for examination and test,  
13 15 the state commissioner shall notify the board of examiners of  
13 16 the request in writing and set a time and place for the  
13 17 examination and test.

13 18 The state commissioner shall formulate, with the advice and  
13 19 assistance of the examiners, and adopt rules governing the  
13 20 testing and examination of any voting machine or ~~electronic~~  
13 21 optical scan voting system by the board of examiners. The  
13 22 rules shall prescribe the method to be used in determining  
13 23 whether the machine or system is suitable for use within the  
13 24 state and performance standards for voting equipment in use  
13 25 within the state. The rules shall provide that all ~~electronic~~  
13 26 optical scan voting systems and voting machines approved for  
13 27 use by the examiners after April 9, 2003, shall meet voting  
13 28 systems performance and test standards, as adopted by the  
13 29 federal election commission on April 30, 2002, and as deemed  
13 30 adopted by Pub. L. No. 107=252, section 222. The rules shall  
13 31 include standards for determining when recertification is  
13 32 necessary following modifications to the equipment or to the  
13 33 programs used in tabulating votes, and a procedure for  
13 34 rescinding certification if a system or machine is found not  
13 35 to comply with performance standards adopted by the state  
14 1 commissioner.

14 2 The state commissioner may employ a competent person or

14 3 persons to assist the examiners in their evaluation of the  
14 4 equipment and to advise the examiners as to the sufficiency of  
14 5 the equipment. Consultant fees shall be paid by the person  
14 6 who requested the certification. Following the examination  
14 7 and testing of the voting machine or system the examiners  
14 8 shall report to the state commissioner describing the testing  
14 9 and examination of the machine or system and upon the capacity  
14 10 of the machine or system to register the will of voters, its  
14 11 accuracy and efficiency, and with respect to its mechanical  
14 12 perfections and imperfections. Their report shall be filed in  
14 13 the office of the state commissioner and shall state whether  
14 14 in their opinion the kind of machine or system so examined can  
14 15 be safely used by voters at elections under the conditions  
14 16 prescribed in this chapter. If the report states that the  
14 17 machine or system can be so used, it shall be deemed approved  
14 18 by the examiners, and machines or systems of its kind may be  
14 19 adopted for use at elections as provided in this section. Any  
14 20 form of voting machine or system not so approved cannot be  
14 21 used at any election. Before actual use by a county of a  
14 22 particular electronic optical scan voting system which has  
14 23 been approved for use in this state, the state commissioner  
14 24 shall formulate, with the advice and assistance of the  
14 25 examiners, and adopt rules governing the development of vote  
14 26 counting programs and all procedures used in actual counting  
14 27 of votes by means of that system.

14 28 Sec. 26. Section 52.8, Code 2007, is amended to read as  
14 29 follows:

14 30 52.8 EXPERIMENTAL USE.

14 31 The board of supervisors of any county may provide for the  
14 32 experimental use at an election in one or more districts, of a  
14 33 voting machine or electronic optical scan voting system which  
14 34 it might lawfully adopt, without a formal adoption thereof;  
14 35 and its use at such election shall be as valid for all  
15 1 purposes as if it had been lawfully adopted.

15 2 Sec. 27. Section 52.23, unnumbered paragraph 1, Code 2007,  
15 3 is amended to read as follows:

15 4 After the total vote for each candidate has been  
15 5 ascertained, and before leaving the room or voting place, the  
15 6 precinct election officials shall make and sign the ~~canvass~~  
~~15 7 forms referred to in section 52.21, which canvass shall serve~~  
~~15 8 as a written statement of election. Said canvass statement~~  
~~15 9 shall be in lieu of the tally list required in section 50.16.~~

15 10 Sec. 28. Section 52.25, unnumbered paragraphs 1 and 2,  
15 11 Code 2007, are amended to read as follows:

15 12 The question of a constitutional convention, amendments,  
15 13 and public measures including bond issues may be voted on  
15 14 voting machines and on ~~special paper~~ ballots in the following  
15 15 manner:

15 16 The entire convention question, amendment or public measure  
15 17 shall be printed and displayed prominently in at least four  
15 18 places within the voting precinct, and inside each voting  
15 19 booth, ~~or on the left-hand side inside the curtain of each~~  
~~15 20 voting machine,~~ the printing to be in conformity with the  
15 21 provisions of chapter 49. The public measure shall be  
15 22 summarized by the commissioner and in the largest type  
15 23 possible printed on the ~~special paper~~ ballots or ~~inserts used~~  
~~15 24 in on~~ the voting machines, except that:

15 25 Sec. 29. Section 52.26, subsection 1, unnumbered paragraph  
15 26 1, Code 2007, is amended to read as follows:

15 27 Every electronic optical scan voting system approved by the  
15 28 state board of examiners for ~~voting machines and electronic~~  
15 29 voting systems shall:

15 30 Sec. 30. Section 52.26, subsection 1, paragraph a, Code  
15 31 2007, is amended to read as follows:

15 32 a. Provide for voting in secrecy, except as to persons  
15 33 entitled by sections 49.90 and 49.91 to assistance. The state  
15 34 board of examiners for ~~voting machines and electronic~~ voting  
15 35 systems shall determine whether the systems' voting booths  
16 1 provide for voting in secrecy.

16 2 Sec. 31. Section 52.27, Code 2007, is amended to read as  
16 3 follows:

16 4 52.27 COMMISSIONER TO PROVIDE ELECTRONIC OPTICAL SCAN  
16 5 VOTING EQUIPMENT.

16 6 The commissioner having jurisdiction of any precinct for  
16 7 which the board of supervisors has adopted voting by means of  
16 8 an electronic optical scan voting system shall, as soon as  
16 9 practicable thereafter, provide for use at each election held  
16 10 in the precinct special paper optical scan ballots and ~~vote~~  
16 11 ~~ballot~~ marking devices in appropriate numbers. The  
16 12 commissioner shall have custody of all equipment required for  
16 13 use of the electronic optical scan voting system, and shall be

16 14 responsible for maintaining it in good condition and for  
16 15 storing it between elections. All provisions of chapter 49  
16 16 relative to times and circumstances under which voting  
16 17 machines are to be used in any election and the number of  
16 18 voting machines to be provided shall also govern the use of  
16 19 ~~electronic optical scan~~ voting systems, when applicable.

16 20 Sec. 32. Section 52.28, Code 2007, is amended to read as  
16 21 follows:

16 22 52.28 ~~ELECTRONIC OPTICAL SCAN~~ VOTING SYSTEM BALLOT FORMS.

16 23 The commissioner of each county in which the use of an  
16 24 ~~electronic optical scan~~ voting system in one or more precincts  
16 25 has been authorized shall determine the arrangement of  
16 26 candidates' names and public questions upon the ballot or  
16 27 ballots used with the system. The ballot information shall be  
16 28 arranged as required by chapters 43 and 49, and by any  
16 29 relevant provisions of any statutes which specify the form of  
16 30 ballots for special elections, so far as possible within the  
16 31 constraints of the physical characteristics of the ~~electronic~~  
16 32 ~~optical scan~~ voting system in use in that county. The state  
16 33 commissioner may adopt rules requiring a reasonable degree of  
16 34 uniformity among counties in arrangement of ~~electronic optical~~  
16 35 ~~scan~~ voting system ballots.

17 1 Sec. 33. Section 52.29, Code 2007, is amended to read as  
17 2 follows:

17 3 52.29 ~~ELECTRONIC OPTICAL SCAN~~ VOTING SYSTEM SAMPLE  
17 4 BALLOTS.

17 5 The commissioner shall provide for each precinct where an  
17 6 ~~electronic optical scan~~ voting system is in use at least four  
17 7 sample ~~special paper optical scan~~ ballots which shall be exact  
17 8 copies of the official ballots as printed for that precinct.  
17 9 The sample ballots shall be arranged in the form of a diagram  
17 10 showing the ~~special paper optical scan~~ ballot as it will  
17 11 appear to the voter in that precinct on election day. The  
17 12 sample ballots shall be posted prominently within the polling  
17 13 place, and shall be open to public inspection during the hours  
17 14 the polls are open on election day.

17 15 Sec. 34. Section 52.31, Code 2007, is amended to read as  
17 16 follows:

17 17 52.31 PROCEDURE WHERE VOTES CAST ON ~~SPECIAL PAPER OPTICAL~~  
17 18 ~~SCAN~~ BALLOTS.

17 19 Preparations for voting and voting at any election in a  
17 20 precinct where votes are to be received on ~~special paper~~  
17 21 ~~optical scan~~ ballots shall be in accordance with the  
17 22 provisions of chapter 49 governing voting upon conventional  
17 23 paper ballots with the following exceptions:

17 24 1. Before entering the voting booth each voter shall be  
17 25 cautioned to mark the ballot only with a ~~vote ballot~~ marking  
17 26 device provided in the booth or by the precinct election  
17 27 officials.

17 28 2. In each precinct where ~~a portable vote tallying system~~  
17 29 ~~automatic tabulating equipment~~ is used ~~and the ballots are~~  
17 30 ~~tabulated by a device located in the precinct which is~~  
17 31 ~~equipped with a mechanism which will not permit more than one~~  
17 32 ~~ballot to be inserted at a time, the voter may personally~~  
17 33 insert the ballot into the tabulating device.

17 34 Sec. 35. Section 52.35, unnumbered paragraph 1, Code 2007,  
17 35 is amended to read as follows:

18 1 ~~Within five days before~~ Before the date of any election at  
18 2 which votes are to be cast by means of an ~~electronic optical~~  
18 3 ~~scan~~ voting system ~~and tabulated at a counting center~~  
18 4 ~~established under section 52.34, the commissioner in charge of~~  
18 5 ~~the counting center where votes so cast are to be tabulated~~  
18 6 shall have the automatic tabulating equipment, ~~including the~~  
18 7 ~~portable tabulating devices, tested to ascertain that it will~~  
18 8 correctly count the votes cast for all offices and on all  
18 9 public questions. Testing shall be completed not later than  
18 10 twelve hours before the opening of the polls on the morning of  
18 11 the election. The procedure for conducting the test shall be

18 12 as follows:

18 13 Sec. 36. Section 52.35, subsection 3, Code 2007, is  
18 14 amended to read as follows:

18 15 3. The test group of ballots used for the test shall be  
18 16 clearly labeled as such, and retained in the ~~counting center~~  
18 17 ~~commissioner's office.~~ The test prescribed in subsection 2  
18 18 ~~shall be repeated immediately before the start of the official~~  
18 19 ~~tabulation of ballots cast in the election, and again~~  
18 20 ~~immediately after the tabulation is completed.~~ The test group  
18 21 of ballots and the programs used for the counting procedure  
18 22 shall be sealed, retained for the time required for and  
18 23 disposed of in the same manner as ballots cast in the  
18 24 election.

18 25 Sec. 37. Section 52.37, Code 2007, is amended to read as  
18 26 follows:

18 27 ~~52.37~~ COUNTING CENTER SPECIAL PRECINCT TABULATION  
18 28 PROCEDURE.

18 29 The tabulation of absentee and provisional ballots cast by  
18 30 means of an electronic optical scan voting system, ~~at a~~  
~~18 31 counting center established pursuant to this chapter,~~ shall be  
18 32 conducted as follows:

18 33 ~~1. The sealed ballot container from each precinct shall be~~  
~~18 34 delivered to the counting center by two election officials,~~  
~~18 35 not members of the same political party if the ballot contains~~  
~~19 1 partisan offices, who shall travel together in the same~~  
~~19 2 vehicle and shall have the container under their immediate~~  
~~19 3 joint control until they surrender it to the commissioner or~~  
~~19 4 the commissioner's designee in charge of the counting center.~~  
~~19 5 The commissioner may designate two precinct election~~  
~~19 6 officials, of different political parties if the ballot~~  
~~19 7 contains partisan offices, to collect the sealed ballot~~  
~~19 8 containers from more than one precinct to deliver to the~~  
~~19 9 counting center. The commissioner or designee shall, in the~~  
~~19 10 presence of the two precinct election officials who delivered~~  
~~19 11 the container, enter on a record kept for the purpose that the~~  
~~19 12 container was received, the time the container was received,~~  
~~19 13 and the condition of the seal upon receipt.~~

19 14 ~~In nonpartisan elections the election officials delivering~~  
~~19 15 the ballots are not required to be members of any political~~  
~~19 16 party, or to be members of different political parties.~~

19 17 ~~2. 1. After the record required by subsection 1 has been~~  
~~19 18 made, the ballot container shall be opened. If any ballot is~~  
19 19 found damaged or defective, so that it cannot be counted  
19 20 properly by the automatic tabulating equipment, a true  
19 21 duplicate shall be made by the resolution board team and  
19 22 substituted for the damaged or defective ballot, or, as an  
19 23 alternative, the valid votes on a defective ballot may be  
19 24 manually counted ~~at the counting center~~ by the resolution  
19 25 special precinct election board, whichever method is best  
19 26 suited to the system being used. All duplicate ballots shall  
19 27 be clearly labeled as such, and shall bear a serial number  
19 28 which shall also be recorded on the damaged or defective  
19 29 ballot.

19 30 The resolution special precinct election board shall also  
19 31 tabulate any write-in votes which were cast. Write-in votes  
19 32 cast for a candidate whose name appears on the ballot for the  
19 33 same office shall be counted as a vote for the candidate  
19 34 indicated, if the vote is otherwise properly cast.

19 35 Ballots which are rejected by the tabulating equipment as  
20 1 blank because they have been marked with an unreadable marker  
20 2 shall be duplicated or tabulated as required by this  
20 3 subsection for damaged or defective ballots. The commissioner  
20 4 may instruct the resolution special precinct election board to  
20 5 mark over voters' unreadable marks using a marker compatible  
20 6 with the tabulating equipment. The resolution special  
20 7 precinct election board shall take care to leave part of the  
20 8 original mark made by the voter. If it is impossible to mark  
20 9 over the original marks made by the voter without completely  
20 10 obliterating them, the ballot shall be duplicated.

20 11 ~~3. 2.~~ The record printed by the automatic tabulating  
20 12 equipment, with the addition of a record of any write-in or  
20 13 other votes manually counted pursuant to this chapter, shall  
20 14 constitute the official return of the absentee ballot and  
20 15 special voter's precinct. Upon completion of the tabulation  
20 16 of the votes ~~from each individual precinct,~~ the result shall  
20 17 be announced and reported in substantially the manner required  
20 18 by section 50.11.

20 19 ~~4. 3.~~ If for any reason it becomes impracticable to count  
20 20 all or any part of the ballots with the automatic ~~tabulation~~  
20 21 ~~tabulating~~ equipment, the commissioner may direct that they be  
20 22 counted manually, in accordance with chapter 50 so far as  
20 23 applicable.

20 24 Sec. 38. Section 331.383, Code 2007, is amended to read as  
20 25 follows:

20 26 331.383 DUTIES AND POWERS RELATING TO ELECTIONS.

20 27 The board shall ensure that the county commissioner of  
20 28 elections conducts primary, general, city, school, and special  
20 29 elections in accordance with applicable state law. The board  
20 30 shall canvass elections in accordance with sections 43.49 to  
20 31 43.51, 43.60 to 43.62, 46.24, 50.13, 50.24 to 50.29, 50.44 to  
20 32 50.47, 260C.39, 275.25, 277.20, 376.1, 376.7, and 376.9. The  
20 33 board shall prepare and deliver a list of persons nominated in  
20 34 accordance with section 43.55, provide for a recount in  
20 35 accordance with section 50.48, provide for election precincts

21 1 in accordance with sections 49.3, 49.4, 49.6 to 49.8 and  
21 2 49.11, pay election costs as provided in section 47.3,  
21 3 participate in election contests as provided in sections 62.1A  
21 4 and 62.9, and perform other election duties required by state  
21 5 law. The board may authorize additional precinct election  
21 6 officials as provided in section 51.1, provide for the use of  
21 7 a voting machine or ~~electronic~~ optical scan voting system as  
21 8 provided in sections 52.2, 52.3, and 52.8, ~~and 52.34,~~ and  
21 9 exercise other election powers as provided by state law.

21 10 Sec. 39. Section 331.441, subsection 2, paragraph b,  
21 11 subparagraph (1), Code 2007, is amended to read as follows:

21 12 (1) Voting machines or an ~~electronic~~ optical scan voting  
21 13 system.

21 14 Sec. 40. Section 364.2, subsection 4, paragraph b, Code  
21 15 2007, is amended to read as follows:

21 16 b. Such an ordinance shall not become effective unless  
21 17 approved at an election. The proposal may be submitted by the  
21 18 council on its own motion to the voters at any city election.  
21 19 Upon receipt of a valid petition as defined in section 362.4  
21 20 requesting that a proposal be submitted to the voters, the  
21 21 council shall submit the proposal at the next regular city  
21 22 election or at a special election called for that purpose  
21 23 before the next regular city election. However, the city  
21 24 council may dispense with such election as to the grant,  
21 25 amendment, extension, or renewal of an electric light and  
21 26 power, heating, or gasworks franchise unless there is a valid  
21 27 petition requesting submission of the proposal to the voters,  
21 28 or the party seeking such franchise, grant, amendment,  
21 29 extension, or renewal requests an election. If a majority of  
21 30 those voting approves the proposal, the city may proceed as  
21 31 proposed. The complete text of the ordinance shall be  
21 32 included on the ballot if conventional paper ballots are used.  
21 33 If an ~~electronic~~ optical scan voting system or voting machine  
21 34 is used, the proposal shall be stated on the optical scan  
21 35 ballot and on the machine, and the full text of the ordinance  
22 1 posted for the voters pursuant to section 52.25. All absentee  
22 2 voters shall receive the full text of the ordinance.

#### 22 3 EXPLANATION

22 4 This bill makes numerous changes relating to voting  
22 5 machines (direct recording electronic devices) and optical  
22 6 scan voting systems.

22 7 The bill amends Code section 49.28 to provide that when  
22 8 voting machines are used in a precinct, the commissioner shall  
22 9 make a supply of paper ballots available in case of a power  
22 10 failure, machine malfunction, or any other condition that  
22 11 prevents a person from casting the person's ballot on the  
22 12 voting machine.

22 13 Code section 50.48, containing the general provisions for  
22 14 recounts, is amended to provide that if a voting machine was  
22 15 used in the election, the paper record produced by the machine  
22 16 for voter review shall be the official record in a recount  
22 17 unless the county commissioner of elections believes or knows  
22 18 that the paper records for a machine have been compromised in  
22 19 some manner.

22 20 Code section 52.1, relating to voting machines and  
22 21 electronic voting system requirements, is amended to rewrite  
22 22 several of the definitions. "Electronic voting system", is  
22 23 changed to "optical scan voting system", and other changes are  
22 24 made to related terminology.

22 25 Code section 52.2 is amended to provide that on or after  
22 26 the effective date of the bill a county whose voting system  
22 27 primarily utilizes voting machines shall, when replacing the  
22 28 system, replace the system with an optical scan voting system  
22 29 only, and the federal law requirements relating to disabled  
22 30 voters shall be met through the use of an electronic ballot  
22 31 marking device that is compatible with an optical scan voting  
22 32 system. The bill further provides that on or after the  
22 33 effective date of the bill those counties that utilize both a  
22 34 voting machine and an optical scan voting system shall, when  
22 35 replacing a voting machine, replace the voting machine with an  
23 1 electronic ballot marking device that is compatible with an  
23 2 optical scan voting system.

23 3 Code section 52.7, relating to requirements for  
23 4 construction of voting machines, is stricken and rewritten for  
23 5 ease of reading and also to provide that, for all elections  
23 6 held on or after November 4, 2008, voting machines shall  
23 7 provide a paper record for review by the voter at the polling  
23 8 place.

23 9 Code section 52.33 is amended to provide that any county  
23 10 using an optical scan voting system shall also conduct  
23 11 absentee voting by use of such a system.

23 12 The bill repeals Code sections relating to use of voting  
23 13 machines that are lever machines.  
23 14 The bill repeals Code sections authorizing and referring to  
23 15 the use of counting centers to tabulate optical scan ballots  
23 16 at a central location rather than at each precinct.  
23 17 The bill makes conforming amendments related to the  
23 18 terminology changes in Code section 52.1 and the Code section  
23 19 repeals.  
23 20 LSB 1607SV 82  
23 21 sc:nh/je/5